

IN THE COURT OF APPEALS OF IOWA

No. 0-298 / 10-0135
Filed May 26, 2010

**IN RE THE MARRIAGE OF RENEE LYNN KERSEY
AND THOMAS EDWARD KERSEY**

**Upon the Petition of
RENEE LYNN KERSEY,**
Petitioner-Appellee,

**And Concerning
THOMAS EDWARD KERSEY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Sac County, Gary L. McMinimee,
Judge.

Thomas Kersey appeals from the district court's award of alimony.

AFFIRMED.

Patrick W. O'Bryan, Des Moines, for appellant.

Julie G. Mayhall of Green, Siemann & Greteman, P.L.C., Carroll, for
appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

Thomas and Renee Kersey were married in November 1998 and separated in March 2009. This was Thomas's second marriage and Renee's third. At the time of trial, Renee was forty-nine and Thomas was fifty-five. They each have two adult children from prior relationships whose welfare is not affected by the dissolution.

Thomas is a truck driver employed by Liberty Tire Recycling. He works sixty hours per week and is paid \$17.55 per hour for eighty hours every two weeks and \$26.325 per hour for forty overtime hours every two weeks. He has earned about \$64,000 per year since 2005. He also receives a small veteran's disability benefit each month.

At the time of the marriage, Thomas had a 1979 pickup, two motorcycles, and clothes. He had credit card debt, for which Renee paid \$3973.41 in October 1998.

Renee was employed by Crouse Cartage Company at the time of the marriage where she earned \$14 per hour. The company was sold and Renee lost her job. She then worked at a restaurant and for Real Optics where she earned \$18,000 per year. Since 2006, she has performed clerical work for her father's company earning \$10 per hour. She has a high school diploma and has taken a few community college courses. She expressed a desire to get a degree.

Renee came into the marriage with approximately \$86,000 in a money market account. She owned a 1997 Blazer free of encumbrances and had no credit cards. Renee also owned a home, which was sold in 1999 for a net gain of

\$31,105.02. In October 2000, Renee cashed in a retirement account, netting \$10,019.08.

Renee received numerous gifts during the marriage. From her grandmother Renee received Christmas gifts of \$5000 in 1998 and 1999, and an inheritance of \$25,000 in 2000. In 2001 and 2002, her parents gave her life insurance premium payments totaling \$25,000 towards a \$100,000 policy.¹

Renee's parents also gave Thomas and Renee a Christmas gift of \$5000 in 2001. In 2002, Renee received another gift of \$5000. In 2003, Thomas and Renee each were given Christmas gifts of \$2000; in 2004, they each received \$1000; in 2005, Thomas received \$1000 and Renee received \$2000; in 2008, they received \$2000. In 2006, Renee's parents purchased furniture for the couple at a cost of \$1254.98.

At the time of trial, the parties owned a home, which the trial court valued at \$26,500 and which was encumbered by a first mortgage (at 6.5% interest) in the amount of \$42,608.95, and a second mortgage in the amount of \$12,412.95 (at 11.5075% interest). They owned a camper valued at \$3000 in which Thomas resides. They also owned a 1993 Ford pickup with a value of \$500. The vehicle Renee was leasing at the time the dissolution was filed was repossessed before trial; however, the parties owed \$2402.69 on the lease. Thomas had two additional vehicles: a 2004 Chevrolet Silverado with a value of \$15,000 (with approximately that amount owed); and a 2007 Harley Davidson motorcycle with a value of \$12,000 (again with approximately that amount owed). Thomas's

¹ Renee and Thomas borrowed against this policy to pay bills. At the time of trial, the policy had a value of \$31,399.48, with a loan balance of \$12,982.10.

monthly payments on the Silverado are \$550, with insurance costing \$380 every six months. He pays \$281.69 per month for the loan on the Harley, as well as \$40 per month for insurance.

Thomas and Renee had numerous additional debts at the time of trial: they owed \$11,448.97 on a Discover Card, \$1103.96 on a Menard's card, \$529.72 to the McFarland Clinic, \$251.92 to Nebraska Furniture Mart, \$161.14 for tires on the repossessed vehicle, and smaller amounts to Victoria's Secret and the Gap. Thomas settled a debt to American Express for \$3000 with a loan from his sister; Renee was never aware of the card or the debt thereon.

Following trial, the district court entered its findings of fact, conclusions of law, decree of dissolution and judgment. The court concluded:

Here, both parties made substantial contributions. Thomas's annual income over the past four years was about \$65,000. Although Renee's annual income during the same years was only about one third of Thomas's, she also contributed her premarital assets and the substantial cash gifts she received to the marriage. Renee's net premarital assets exceeded Thomas's net premarital assets by more than \$130,000. The cash gifts she received during the marriage exceeded the cash gifts received by Thomas by over \$40,000. Moreover, Thomas's payments to and for his children exceeded Renee's payments for her children by more than \$40,000. Considering less tangible contributions, Renee appropriately cared for their residences and Thomas handled the parties' finances, but did so in a controlling manner and, considering the parties' debt, in an incompetent and irresponsible manner.

The district court divided the marital property in accordance with the parties' pretrial stipulations. Renee received the marital home, subject to the first mortgage; the life insurance policy, subject to the debt thereon, bank accounts in her name, and property in her possession. Thomas received the trailer and the Cutty's ownership interest, bank accounts in his name, his veteran's disability

benefits, and property in his possession. With respect to disputed items, the district court awarded Renee the Silverado and the Harley Davidson, stating its view that they should be sold. Thomas was awarded the 1993 Ford pickup. Thomas was ordered to pay the second mortgage, the Discover Card, Nebraska Furniture Mart, Menards, and other debt. In addition to the first mortgage on the home, and the debt on the life insurance policy, Renee was ordered to pay the amounts owed to the Gap, Victoria's Secret, GMAC, and the McFarland Clinic.

Thomas was also ordered to pay Renee alimony of \$1000 for 120 months. Thomas appeals, contending the alimony award is excessive.

Alimony "is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1988). Alimony is not an absolute right; any form of alimony is within the discretion of the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). The discretionary award of alimony is made after considering the factors listed in Iowa Code section 598.21A(1) (2009). These factors include: (1) the length of the marriage, (2) the age and physical and emotional health of the parties, (3) the property distribution, (4) the educational level of each party at the time the dissolution action is commenced, (5) the earning capacity of the party seeking alimony, and (6) the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Iowa Code § 598.21A(1)(a)–(f).

We review this equitable proceeding de novo. Iowa R. App. P. 6.907 (2009). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App.

1999). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g). "Even though our review is de novo, we accord the trial court considerable latitude in making [an alimony] determination and will disturb the ruling only when there has been a failure to do equity." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

Upon our de novo review, we find no failure to do equity. We agree with the district court that:

Renee is entitled to a substantial alimony award. She leaves the 10 year marriage substantially disadvantaged compared to Thomas. She came to the marriage with a net worth in excess of \$130,000, received gifts with a value in excess of \$65,000, and leaves the marriage at 50 years old with a negative net worth. Her earning capacity is about \$19,000 and, given her age and education, there is little likelihood that her earning capacity will increase. Thomas came to the marriage with little, if any, net worth and leaves at 55 years of age with a negative net worth of about \$31,000. His earning capacity, however, is about \$65,000 per year. Considering that each party should be entitled to a reasonable standard of living in view of the debts for which the party is responsible, Renee's inability to increase her earning capacity to attain a standard of living comparable to that enjoyed during the marriage, and Thomas's ability to pay given his age and debt, Thomas should pay Renee alimony of \$1000 per month for 120 months, unless he sooner dies or [Renee] sooner dies or remarries.

Accordingly, we affirm the district court's alimony award.

AFFIRMED.